Supreme Court U.S.
FILED
JAN 17 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

CASE NO. 79-5816

CHARLOTTE FIELDHOUSE and EDMUND FIELDHOUSE,

Appellants,

vs.

THE PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, an agency and instrumentality of Dade County, Florida, which operates Jackson Memorial Hospital,

Appellee.

APPELLEE'S MOTION TO DISMISS OR AFFIRM

Appellee in the above entitled case moves to dismiss and/or affirm on the grounds that the appeal presents a question which is so unsubstantial as not to need further argument.

THE QUESTION IS NOT SUBSTANTIAL

Appellant argues that the decision of FIELDHOUSE v. PUBLIC HEALTH TRUST OF DADE COUNTY, 374 So.2d 476 (Fla.1979), requires review because it permits existence of a scheme of discrimination in the State of Florida whereby husbands unfairly can be held responsible for the payment of bills arising out of medical necessities supplied to their spouses while no such responsibility can similarly be imposed on the wives. The fallacy of Appellant's argument, precisely, is his assumption that a wife may not be sued for her husband's medical bills incurred during the marriage. However, the statute under challenge, Florida Statute 708.10 merely states that the Florida Married Women's Property Act, Chapter 708, in its entirety shall not be construed as relieving a husband of any duty of supporting his wife and children he may otherwise have. Because the statute does not create a duty on the part of the husband for his wife, and does not relieve a wife of any duty which she may have to support her husband, it is not discriminatory in any fashion. It does not impose affirmative duties, rather it merely concerns itself with the ambit of the Married Women's Property Act and describes, in one instance, what the act does not do.

The Appellant can point to no Florida decision insulating a wife from an obligation to supply her husband with medical necessities should he have a need and should she be in a financial position to do so. On the contrary, the question on the merits of whether a wife could be sued for her husband's necessities is no longer open to possible contention because the propriety of such a suit has been so clearly established in the recent case of Orr v. Orr, _____U.S._____, 99 S.Ct. 1102, 59 L.Ed. 2d 306 (1979), as to absolutely foreclose further contention on the subject.

If, today, a statute would be necessary to invest men with the right to own or convey realty, to sue or be sued, to contract in his own name, then - it can be safely assumed - that statute would necessarily include a clause, similar to Section 708.10, indicating that the overall statute should not be construed so as to relieve a wife of any duty she may have to support her husband and family.

Additionally, no constitutional offense is presented by the fact that the wife's obligation to support her family, when she is financially able and the family has need, takes root in judicial rather than legislative fundament. After all, the husband's equivalent obligation, left unaffected by the statute now under challenge, was a product of judicial initiative. It is, as Appellant complains, a common law scheme.

In short, since the common law has evolved to the point where the support obligations of men and women are equal with respect to the marriage and to the family unit, the premise that a wife does not shoulder equal responsibility if she is in the position to do so is fallacious and cannot support, in any way, the Appellant's empty contention that husbands and wives in Florida are subject to unequal treatment in violation of the Fourteenth Amendment to the United States Constitution. The Appellee, therefore, respectfully submits that the issues raised by the Appellant are so unsubstantial as to create no real controversy and require no further argument on the subject.

WHEREFORE, upon the foregoing discussion and recitation of authority, the Appellee, PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, respectfully requests that this Honorable Court dismiss the appeal and/or affirm the decision of the Florida Supreme Court now under review.

Respectfully submitted this 16th day of January, 1980.

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By _____
ROBERT A. GINSBURG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or Affirm was mailed this 16th day of January, 1980 to: [illegible]STER C. WISOTSKY, ESQ., Legal Services of Greater Miami, Inc., Senior Citizens Law Center, 833 Sixth Street, Miami Beach, Florida 33139; BRIAN BRATTEBO, ESQ., 10th Floor, Southeast First National Bank Building, Miami, Florida 33131; MILTON ROBBINS, Assistant State Attorney, Room 600, 1351 N.W. 12th Street, Miami, Florida 33125, and JIM SMITH, Attorney General, State of Florida, Capitol Building, Tallahassee, Florida 32304.

By _____